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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN WITHEROW,

Petitioner - Appellant,

v.

JACK PALMER; et al.,

Respondents - Appellees.

No. 07-16328

D.C. No. CV-06-00259-HDM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted April 22, 2008^{**}

Before: GRABER, FISHER, and BERZON, Circuit Judges

John Witherow, a Nevada state prisoner, appeals pro se the denial of his habeas corpus petition brought under 28 U.S.C. § 2254. He contends that the

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Nevada Board of Parole Commissioners denied him due process by failing to release him two years after his parole had been revoked. As stated by the district court, the parole board provided only for review, not release, after two years. Therefore, Witherow had no due process liberty interest in release after two years. *See Kelch v. Director, Nev. Dep't of Prisons*, 10 F.3d 684, 687 (9th Cir. 1993) (stating that protectible right requires legitimate claim of entitlement). We reject appellees' argument that a certificate of appealability is required because in Nevada parole board decisions are quasi-judicial functions. *See Rosas v. Nielsen*, 428 F.3d 1229, 1231-32 (9th Cir. 2005).

AFFIRMED.